

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

RESIDENTIAL CAPITAL, LLC, *et al.*,

Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**ORDER REGARDING PRETRIAL PROCEEDINGS CONCERNING CLAIM
NUMBERS 2291, 2294, 2295, AND 2357
FILED BY PAMELA D. LONGONI AND JEAN GAGNON**

A P P E A R A N C E S:

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**MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE**

The ResCap Borrower Claims Trust (the “Trust”) has objected to Claim Numbers 2291, 2294, 2295, and 2357 (the “Claims”) filed by Pamela D. Longoni (“Longoni”), individually and on behalf of her daughter, Lacey Longoni, as well as Longoni’s former partner, Jean Gagnon (“Gagnon,” and together with Longoni and Lacey Longoni, the “Claimants”). The Court previously sustained in part and overruled in part the Trust’s objection to the Claims, resulting in a contested matter scheduled for trial on January 25, 2016. Under the Case Management and Scheduling Order entered on July 16, 2015 (ECF Doc. # 8903), all fact discovery was required to

be concluded on or before November 13, 2015. On November 18, 2015, the Court held a Case Management Conference, and pursuant to the Court's direction at the conference, counsel submitted a joint status letter, dated December 2, 2015 ("Status Letter," ECF Doc. # 9381), addressing certain discovery and other pretrial issues that remain in dispute. This Order addresses issues that the parties have been unable to resolve without further direction from the Court.

With respect to the search for and production of additional emails described in the Status Letter as the "first" and "second" disputes, the Court is satisfied that the Trust's counsel is undertaking appropriate steps to locate additional responsive emails, if any exists. If the email referenced in LONG-0146 is not located and produced, the Court leaves open the issue of what, if any, inferences may be drawn at trial from the failure to produce the document.

Longoni's counsel requests to take the deposition of Brett Nelson; the Trust does not oppose the request. Nelson's deposition may be taken at a mutually convenient date on or before January 13, 2016. The deposition testimony shall not exceed four hours in length, evenly divided between the parties.

Longoni's counsel requests to take the deposition of Nate Stephenson, to preserve the testimony for use at trial. The Trust's counsel objects to the request. The Court overrules the objection. Stephenson's deposition testimony may be taken at a mutually convenient date on or before January 13, 2016. The deposition testimony shall not exceed four hours in length, evenly divided between the parties.

Longoni's counsel requests permission to take a Rule 30(b)(6) deposition of GMAC Mortgage, LLC. The Trust's counsel objects to the request. The request is untimely so the objection is sustained.

The Trust's counsel argues that Lacey Longoni, on whose behalf her mother, Pamela Longoni, filed a claim, does not have standing to sue because she was never a borrower or mortgagor, and has now reached the age of majority and has not made an appearance on her own behalf. The Trust did not previously move to dismiss Lacey Longoni's claims for lack of standing. The Court will not entertain a further motion to dismiss before trial. With respect to the intentional infliction of emotional distress claim, it is not clear whether Lacey Longoni had to be a borrower or mortgagor to have standing to assert this claim. The parties should address the standing issues in their pretrial briefs. The Court will resolve this issue, if necessary, following trial.

The Trust's counsel has raised again Pamela Longoni's alleged alteration of evidence, specifically with respect to an August 3, 2008 email from Nate Stephenson. The Trust's counsel may attempt to impeach Pamela Longoni's trial testimony based on alleged fabrication of evidence. In addition, that email is relevant and material to the issues in dispute (and not just with respect to the witness's character for truthfulness). Therefore, the Court will permit the Trust to offer extrinsic evidence of alleged fabrication. The Court concludes that, in these circumstances, Federal Rule of Evidence 608(b) does not make inadmissible extrinsic evidence offered to prove fabrication. Based on the trial record, the Court will, if necessary, entertain a post-trial motion for sanctions.

IT IS SO ORDERED.

Dated: December 4, 2015
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge